
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

MICHAEL A. BACON,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

**MEMORANDUM DECISION AND
ORDER DENYING CERTIFICATE
OF APPEALABILITY**

Case No. 2:19-cv-00735-DN
(Criminal No. 2:14-cr-00563-DN)

District Judge David Nuffer

This case is on limited remand from the Tenth Circuit Court of Appeals to consider whether to issue a certificate of appealability.¹ “A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.”² “To achieve this, [the applicant] must show ‘that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and . . . whether the district court was correct in its procedural ruling.’”³

Mr. Bacon cannot make a substantial showing of the denial of a constitutional right. His claims⁴ are not the appropriate subject matter of a motion under 28 U.S.C. § 2255.⁵ He makes no argument demonstrating how his claims are not barred by his plea statement, in which he waived

¹ Order, *United States v. Bacon*, no. 19-4167 (10th Cir. Dec. 10, 2019), [docket no. 11](#), filed Dec. 10, 2019.

² 28 U.S.C. § 2253(c)(2).

³ *United States v. Wicken*, 514 Fed. App’x 721, 723 (10th Cir. 2013) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

⁴ Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (§ 2255 Motion”), [docket no. 1](#), filed Oct. 3, 2019.

⁵ Memorandum Decision and Order of Dismissal at 5-6, [docket no. 6](#), filed Nov. 20, 2019.

his right to seek relief under § 2255 except on the issue of ineffective assistance of counsel.⁶ And he makes no coherent argument showing the denial of a constitutional right.

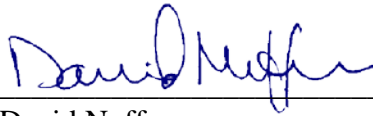
Moreover, jurisdiction over Mr. Bacon's § 2255 Motion was lacking because the § 2255 Motion was his second attempt to obtain relief from his sentence under § 2255, and he did not obtain prior authorization for the filing from a panel of the Tenth Circuit Court of Appeal.⁷ Mr. Bacon also did not assert newly discovered evidence or a new rule of constitutional law, which is required to obtain such authorization.⁸

No reasonable jurist would find the dismissal of Mr. Bacon's § 2255 Motion for lack of jurisdiction debatable. Therefore,

IT IS HEREBY ORDERED that Mr. Bacon is denied a certificate of appealability.

Signed December 12, 2019.

BY THE COURT



David Nuffer
United States District Judge

⁶ *Id.* at 6.

⁷ *Id.* at 4-5.

⁸ *Id.* at 6.